

WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING - JULY 28, 2004

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, July 28, 2004, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Paul Schultz
Walter Tarmann

BOARD MEMBERS ABSENT: Robert Bartholomew
Darryl Judson

SECRETARY TO THE BOARD: Mary E. Finet

OTHERS PRESENT:

Town of Merton Board of Adjustment
Richard P. and Melissa Reith, BA04:042, petitioners
Attorney Maureen McGinnity, BA04:042, representing the
petitioners
Attorney Robyn Schuchardt, BA04:042, Waukesha County
Assistant Corporation Counsel
Jacqueline Rupnow, BA04:042, Court Reporter
David and Joan Fritzler, BA04:034, petitioners
Michael Gallo, BA04:055, petitioner
Ted Janka, BA04:056, petitioner
Rodney Den Boer, BA04:058 petitioner
Attorney Donald Murn, BA04:058, representing the petitioner
John and Patricia Mueller, BA04:054, petitioners
Jay Jacques, BA04:057, petitioner

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Ward *I make a motion to approve the Summary of the Meeting of July 14, 2004. I also move that we go on record as agreeing with the staff's decision to remove Condition #3 from the conditions of approval included in the Decision Sheet for BA04:052 (Patricia Blanchard), as noted on Page 6 of the Summary of the Meeting of July 14, 2004.*

The motion was seconded by Mr. Tarmann and carried unanimously.

NEW BUSINESS:

BA04:034 DAVID FRITZLER (held in abeyance from May 26, 2004)

Mr. Tarmann *I move to deny the request in accordance with the staff's recommendation, for the reasons stated in the staff Report.*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The property contains 3 acres of land, most of it buildable. There is a significant amount of land available north of the septic system that would accommodate a garage and the garage could possibly be located near the proposed location if reconfigured to comply with the offset, road setback and septic setback requirements. Because there are alternative locations to construct the detached garage, it would not be within the spirit and intent of the Ordinance to approve the requested variance.

BA04:055 MICHAEL GALLO

Mr. Schultz *I move to adopt the staff's recommendation, as set forth in the Staff Report, with the following modifications:*

Condition #2 shall be changed to approve a shore setback variance to permit the detached garage to be less than the required 75 ft. from the lake, if such a variance is needed to permit a 22 ft. deep garage to be located, as proposed, 15 ft. from the centerline of the platted road right-of-way.

Condition #4 shall be changed to require that the garage must be reduced in size so that it has a footprint of no more than 22 ft. x 22 ft., or 484 sq. ft., with the resulting floor area ratios noted in the second sentence changed accordingly.

The motion was seconded by Mr. Ward and carried unanimously.

The staff's recommendation was for denial of variances from the offset, shore setback, and building height requirements, but approval of a special exception from the accessory building floor area ratio

requirement and of variances from the road setback, floodplain setback, floor area ratio, and open space requirements, with the following conditions:

1. The detached garage must be located in conformance with the minimum offset requirement of 5.5 ft. from the side lot line and in conformance with the minimum shore setback requirement of 75 ft., as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the garage must be located the additional distance from the side lot line and the lake as the overhangs exceed two (2) ft. in width. Note: Shore setback is measured perpendicular to the lake, even if that is measured across an adjacent lot.
2. The detached garage may be located closer than 75 ft. from the 100-year floodplain, as long as it meets the required 75 ft. shore setback, as noted above.
3. The detached garage must be located at least 15 ft. from the centerline of the road right-of-way, as measured to the outer edge of the wall, provided the overhang does not exceed two (2) ft. in width. If the overhang exceeds two (2) ft. in width, the garage must be located the additional distance from the road as the overhangs exceed two (2) ft. in width. This will place the garage outside of the 30 ft. wide established road right-of-way.
4. The garage must be reduced in size so that it has a footprint of no more than 400 sq. ft. Including the exposed lower level, this would result in an accessory building floor area ratio of 16% and an overall floor area ratio of 37.1%, but if only the footprint of the proposed garage is considered, the resulting accessory building floor area ratio would be 8% and the overall floor area ratio would be 29.1%.
5. The garage must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured on the road side, half way between the peak of the roof and the eaves, must not exceed 15 ft.
6. The garage may contain an upper-level storage area only if that upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.
7. Prior to the issuance of a zoning permit, a complete set of plans for the proposed garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. Prior to the issuance of a zoning permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
9. In order to ensure the construction of the detached garage does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information

must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 8.

10. Any proposed retaining walls must be located at least 5 ft. from the side lot lines, unless the Town of Oconomowoc Plan Commission and the Waukesha County Park and Planning Commission grant approval for retaining walls to be located less than 5 ft. from the side lot lines.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of variances from the offset, shore setback, and accessory building height requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. A two-car detached garage could be located on the property in conformance with the offset and shore setback requirements and the proposed garage could be easily modified to meet the height requirement. Therefore, denial of variances from the offset, shore setback, and accessory building height requirements would not prevent the use of the property for a permitted purpose and would not be unnecessarily burdensome.

However, due to the shallow lot depth, a detached garage cannot be located in conformance with the road setback requirement and an attached garage would not be feasible, due to the steep slope. The proposed garage will not interfere with the public's use of the road or pose a safety hazard. Due to the size of the lot, it is impossible to conform with the floor area ratio and open space requirements. Conformance with the maximum permitted accessory building floor area ratio would permit an accessory building of only 149 sq. ft., which would not allow the construction of even a one-car garage. Although it is felt that a garage is necessary for a reasonable use of the property, variances should be granted only to provide the minimum relief necessary for a reasonable use of the property. As recommended, a 400 sq. ft. detached garage would not be contrary to the public interest and will allow for the construction of a 20 ft. x 20 ft. garage or its equivalent, which is reasonable, given the extremely small lot area, and consistent with other development in the area.

Although a garage with a maximum footprint of 400 sq. ft., as recommended, would result in a relatively high floor area ratio, requiring the footprint of the proposed garage to be reduced any further would prevent the construction of a two-car garage, which would not be appropriate given that other similarly sized lots on Road B have two-car garages. A detached garage with an exposed lower level could be easily constructed into the existing slope, with minimal grading. The exposed lower level would not consume any additional open space and it would provide an additional storage area that would not be visible from the lake or the road. Therefore, it would not be within the purpose and intent of the Ordinance to prohibit the detached garage from having an exposed lower level, as proposed, in order to reduce the proposed accessory building and overall floor area ratios, and the approval of a special exception from the accessory building

floor area ratio requirement, and of variances from the road setback, floodplain setback, floor area ratio, and open space requirements, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

BA04:056 CHRIS JANKA - OWNER (Ted Janka - Petitioner)

Mr. Tarmann *I move to approve the request in accordance with the staff's recommendation, as stated in the Staff Report.*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval. The reasons for the recommendation, as stated in the Staff Report, are as follows:

Conformance with the minimum lot width requirement is not possible because the existing lot does not conform with the minimum lot width requirement. Therefore, a hardship exists and to deny the requested lot width variance would be unnecessarily burdensome because it would prevent the petitioner from dividing his existing lot, which is more than twice the minimum required lot size, even without a "sewer reduction". Further, the existing lot has a depth to width ratio of almost ten to one, which is not in conformance with current standards. Granting the proposed lot width variance will allow this very long and narrow lot be divided into two lots with a more reasonable depth to width ratio and the double road frontage will be eliminated. The width of the proposed lots is only slightly less than the minimum required lot width and is consistent with the width of other lots in the area. Finally, the width of the proposed lots is the same as the existing lot width and will not increase the degree of non-conformity. Therefore, the approval of this request is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

BA04:058 RODNEY J. DEN BOER

Mr. Schultz *I make a motion to adopt the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. A Certified Survey Map combining the two legal lots of record into one lot must be prepared by a registered land surveyor and submitted to the Town of Eagle and the Planning and Zoning Division staff for review and approval. As part of that approval, the Waukesha County Park and Planning Commission shall consider reducing the established road right-of-way width of this portion of South Shore Dr., under Section 3.08 (1) (A) (2) of the Waukesha County Shoreland and Floodland Protection Ordinance. The Certified Survey Map must be recorded in the Waukesha County Register of Deed's office, prior to the issuance of a zoning permit for the new residence.

2. The proposed residence and attached garage must be located at least 33 ft. from the center of the paved roadway. If this results in the garage or in any stone or brick walls along the sides of the driveway being located within the established road right-of-way of South Shore Dr., as indicated on the Certified Survey Map required above, prior to the issuance of a zoning permit, the owner shall be required to secure Town Board approval for the location of those structures partially within the established road right-of-way and to record a Declaration of Restrictions in the Register of Deed's office stating that if, in the future, any portion of the garage or the stone or brick walls should interfere with necessary road improvements, that portion of the garage or the stone or brick walls must be removed at his expense.
3. The proposed residence and attached garage must be located at least 10 ft. from the side lot lines.
4. The proposed residence must meet the shore and floodplain setback requirements. Utilizing the shore and floodplain setback averaging provision of the Ordinance, the minimum required shore setback for the residence is the average of the shore setbacks of the residences on the adjacent lots and the minimum required floodplain setback for the residence is the average of the floodplain setbacks of the residences on the adjacent lots. Note: Shore and floodplain setbacks are measured perpendicular to the lake and to the floodplain, even if that is measured across an adjacent lot.
5. The above dimensions are measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the lake, the road, and the side lot lines, as the overhangs exceed two (2) ft. in width.
6. All decks or patios must meet the shore and floodplain setback requirements. The shore and setback averaging provision of the Ordinance may be utilized only for any decks or patios attached to or adjacent to the residence. Utilizing the shore and floodplain setback averaging provision of the Ordinance, the minimum required shore setback for a deck or patio attached to or adjacent to the residence is the average of the shore setbacks of the decks on the lake side of the residences on the adjacent lots, and the minimum required floodplain setback for a deck or patio attached to or adjacent to the residence is the average of the floodplain setbacks of the decks on the lake side of the residences on the adjacent lots. The shore and floodplain setback averaging provision does not apply to decks or patios if they are not attached to or adjacent to a residence; therefore, any decks or patios that are not attached to or adjacent to the residence must be located at least 75 ft. from the lake and from the floodplain. Note: Shore and floodplain setbacks are measured perpendicular to the lake and the floodplain, even if that is measured across an adjacent lot.
7. The total floor area of the residence and attached garage, not including the exposed basement, must not exceed 3,000 sq. ft. Based on a lot area calculated to the edge of the 25 ft. wide platted road right-of-way, this would result in a floor area ratio of 22.3%. Based on a lot area calculated to a base setback line located 33 ft. from the centerline of the 25 ft. wide platted road right-of-way, this would result in a floor area ratio of 24.9%.
8. New retaining walls cannot be more than 4 ft. in height, unless they are certified by a structural engineer.

9. Detailed plans for all proposed retaining walls, must be submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit for the new residence.
10. Retaining walls less than 5 ft. from the lot line should be eliminated if possible. Prior to the issuance of a zoning permit for the residence, the Town of Eagle Planning Commission and the Waukesha County Park and Planning Commission must approve the location of any retaining walls within 5 ft. of the side lot line.
11. Any proposed stone or brick walls along the sides of the driveway must be located outside of the 25 ft. wide platted road right-of-way of South Shore Dr.
12. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
13. Prior to the issuance of a zoning permit, a Plat of Survey showing the staked-out location of the proposed residence and attached garage, as well as all proposed decks, patios, and retaining or decorative walls, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. If the shore and floodplain setback averaging provision of the Ordinance is to be utilized, the Plat of Survey must also show the shore and floodplain setbacks of the residences on the adjacent lots and the shore and floodplain setbacks of the decks on the lake side of the residences on the adjacent lots.
14. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, and the location of all proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition No. 13.
15. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The granting of variances requires the demonstration of a hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably

prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Further, variances should be granted only to provide the minimum relief necessary for a reasonable use of the property. Although this property consists of two lots, whereas most of the other properties on this portion of South Shore Dr. consist of only one lot, it is felt that the proposed residence is much too large for the still relatively small parcel and would not be in keeping with other development in the area. Conformance with the floor area ratio requirement would likely preclude the construction of a two-story residence, which would be unnecessarily burdensome. However, a residence and attached garage with a maximum floor area, including the first and second floors and the attached garage, of 3,000 sq. ft., as recommended, would not prevent the use of the property for residential purposes and would not be unnecessarily burdensome.

The steep slopes on the property are a physical limitation, necessitating a road setback variance in order to avoid the need for extensive filling and to permit a reasonably sized house and garage to be located in conformance with the shore and floodplain setback requirements. A road setback variance, with the recommended conditions, would not interfere with the public's use of the road or be a safety hazard. It is felt that the requested offset variance to permit a new residence to be located 5 ft. from both side lot lines is not justified, but that some relief from the offset requirement is necessary in order to facilitate the location of a new residence in conformance with the shore and floodplain setback requirements. A minimum offset of 10 ft. from the side lot lines, as recommended, is in conformance with the minimum offset that would be required if the property had an average lot width of 60 ft. or less, as is the case with nearly all of the other properties on this portion of South Shore Dr. Therefore, the approval of variances from the road setback, offset, floor area ratio, and open space requirements, with the recommended conditions, would not be contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

BA04:054 JOHN & PATRICIA MUELLER

Mr. Schultz

I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report, but with the elimination of Condition #6.

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for denial of a shore setback variance, but approval of variances from the floodplain setback, minimum first floor area, floor area ratio, and open space requirements, with the following conditions:

1. The residence must be located at least 75 ft. from the lake, in conformance with the shore setback requirement. Any decks and patios adjacent to the residence must be located at least 61.6 ft. from the lake, in conformance with the shore setback requirement, utilizing the shore setback averaging provision of the Ordinance. Note: Shore setback is measured perpendicular to the lake, even if that is measured across an adjacent lot.
2. The residence and any adjacent decks and patios may be located closer than 75 ft. from the 100-year floodplain, as long as they meet the required shore setbacks noted above.

3. The residence must be located at least 26.5 ft. from the edge of the 33 ft. wide platted road right-of-way of Park Dr., in conformance with the road setback requirement, utilizing the road setback averaging provision of the Ordinance.
4. The residence must be located at least 10 ft. from the side lot lines and all decks and patios must be located at least 6 ft. from the side lot lines.
5. The above dimensions are measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located the additional distance from the lake, the road, and the side lot lines, as the overhangs exceed two (2) ft. in width. Note: Shore setback is measured perpendicular to the lake, even if that is measured across an adjacent lot.
6. The residence must not contain more than three stories, as viewed from the lake.
7. The total floor area of the residence and attached garage, not including the lowest level of the residence and not including any covered areas under the first and second floor decks, must not exceed 2,334 sq. ft., which is the proposed floor area for the residence and attached garage, excluding the lowest level of the residence and not including any covered areas under the first and second floor decks. This will result a floor area ratio of approximately 27%.
8. The “wetbar/kitchen” in the lower level may have a full-size refrigerator, but it cannot also contain a stove.
9. Prior to the issuance of a zoning permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
10. Prior to the issuance of a zoning permit, a Plat of Survey showing the staked-out location of the proposed residence, attached garage, patio, decks, and retaining walls, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval
11. The proposed retaining walls cannot be more than 4 ft. in height, unless they are certified by a structural engineer.
12. Detailed plans for the proposed retaining walls must be submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit.
13. Prior to the issuance of a zoning permit, the Town of Merton Planning Commission and the Waukesha County Park and Planning Commission must approve the location of any retaining walls within 5 ft. of the side lot line.
14. If a new residence is not constructed on the property, the existing retaining walls may remain, provided approval is received from the Town of Merton Planning Commission and the Waukesha County Park and Planning Commission for the location of any portion of those retaining walls within 5 ft. of the side lot line.
15. If a new residence is not constructed on the property, the existing concrete block patio must be cut back so that it conforms with the minimum offset requirement for a patio on this lot, which is 6 ft. from the side lot lines.

16. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades and all proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the plat of survey required in Condition Number 10.
17. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed residence, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of a shore setback variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. A new residence could be located on the property in conformance with the shore setback requirement, with only slight modifications to the proposed footprint and deck. Therefore, denial of a shore setback variance would not prevent the use of the property for a permitted purpose and would not be unnecessarily burdensome.

Due to the size of the lot (8,642 sq. ft.), it is impossible to meet the minimum open space requirement of 10,000 sq. ft. and conformance with the maximum permitted floor area ratio of 15% would permit a total floor area of only 1,296 sq. ft., which would not allow the construction of a single-family residence and garage consistent with other development in the area. However, variances should be granted only to provide the minimum relief necessary for a reasonable use of the property and it is felt that the total floor area of the proposed residence is too large for this small lot and that a smaller house, as recommended, would still allow a reasonable use of the property. Further, although the proposed residence is in conformance with the height requirement, it is felt that the residence, as proposed, which would be four stories tall when viewed from the lake, is too massive for the size of the lot and that it would be in conformance with the purpose and intent of the Ordinance to limit the number of stories, as viewed from the lake, to no more than three. A variance from the minimum required first floor area will allow the construction of residence and attached garage with a smaller footprint, which will help to preserve open space on this small lot and will allow the construction of a residence that is compatible with the existing topography. The new residence will be elevated significantly above the 100-year flood elevation and, even with a variance from the floodplain setback requirement, it will be in no danger from flooding. Therefore, the approval of variances from floodplain

setback, minimum first floor area, floor area ratio, and open space requirements, with the recommended conditions, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

BA04:057 JAY & KATHERINE JACQUES

Mr. Ward *I make a motion to adopt the staff's recommendation, as stated in the Staff Report.*

The motion was seconded by Mr. Tarmann and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The proposed garage addition must be no closer to the road than the existing residence and it must be located at least 20 ft. from the west lot line, in conformance with the minimum offset requirement.
2. Prior to the issuance of a zoning permit, an updated Plat of Survey showing all existing structures and the staked-out location of the proposed garage addition, in conformance with the above condition, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
3. Prior to the issuance of a zoning permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
4. The non-conforming storage shed must be removed from the property or relocated to a conforming location, no later than six (6) months after the issuance of a zoning permit. A conforming location would be at least 5 ft. from the side lot lines, at least 50 ft. from the edge of the road right-of-way, and at least 10 ft. from the residence and attached garage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The proposed addition would not pose a safety hazard or interfere with the public's use of the minor dead-end road that does not extend beyond the subject property. The proposed addition would be no closer to the road than the existing residence; therefore, even if the updated Plat of Survey required above shows that it does not conform with the road setback requirement, it requires only a special exception, rather than a variance, from the road setback requirement. Special exceptions do not require the demonstration of an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

It would be unnecessarily burdensome to deny the requested variance to remodel a non-conforming structure in excess of 50% of its fair market value. The existing residence has only a slightly non-conforming road setback and is in conformance with all other locational requirements of the Ordinance. In order to conform with the road setback requirement, the

residence would need to be relocated approximately 8.5 ft. farther from the road. To require such a relocation in order to permit it to be remodeled and expanded would serve no useful purpose and would be unnecessarily burdensome. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

BA04:042 RICHARD P. REITH (decision held in abeyance from June 9, 2004)

Mr. Tarmann

I move to approve the request for the reasons set forth in the Addendum to the Staff Report, dated July 28, 2004, with the conditions set forth in the Addendum, with the following changes:

Condition #2 shall be changed to read "The proposed deck on the second floor shall be permitted, but it may not extend more than 4 ft. from the lake side of the residence and it may not extend beyond the sides of the residence, as proposed by the petitioner."

Condition #3 shall be changed to read "The existing first floor deck may be enlarged, as proposed by the petitioner, in conformance with the side yard offset requirement of 6 ft. and extending no closer to the lake than the existing deck."

The reasons set forth in the Addendum shall be modified to eliminate the second sentence in the last paragraph, which reads "Although the proposed deck extension would be no closer to the lake than the existing deck, requiring special exceptions, rather than variances, from the shore and floodplain setback requirements, to permit such an expansion would increase the amount of impermeable surface and congestion near the lake, which would not be in conformance with the purpose and intent of the Ordinance."

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The second floor addition shall not extend beyond the footprint of the existing residence.
2. The proposed deck on the second floor shall be permitted, but it may not extend more than 4 ft. from the lake side of the residence and it may not extend beyond the sides of the residence.
3. The existing first floor deck shall not be enlarged.
4. The cost of the remodeling and expansion shall not exceed 50% of the fair market value of the residence. If a zoning permit is not issued within six months of the date of the decision in this case, a new cost estimate verifying that the cost of the proposed construction will still be less than 50% of the fair market value of the residence shall be submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a zoning permit.

The reasons for the recommendation, as stated in the Staff Report Addendum of July 28, 2004, are as follows:

The proposed second floor addition would extend no closer to the side lot line, the lake, or the floodplain, than the existing residence. Therefore, it requires special exceptions, rather than variances, from the offset, shore setback, and floodplain setback requirements. Special exceptions do not require the demonstration of an unnecessary hardship. The proposed second floor addition requires a floor area ratio variance, but it is a minor expansion that would add only 314 sq. ft. to the residence, resulting in a floor area of 1,314 sq. ft. Although the second floor addition would increase the floor area ratio from 17.4% to 22.9%, it would not decrease the open space and it would not be contrary to the public interest. A 1,314 sq. ft. residence is not overly large for this small lot and would still be smaller than the residence under construction on the adjacent lot to the west, which will have a floor area of approximately 1,700 sq. ft.

Since the proposed expansion is relatively minor and will not cost more than 50% of the fair market value of the structure, it would be unnecessarily burdensome to require the construction of a new residence in a more conforming location in order to gain a slight increase in living space. Although the proposed deck extension would be no closer to the lake than the existing deck, requiring special exceptions, rather than variances, from the shore and floodplain setback requirements, to permit such an expansion would increase the amount of impermeable surface and congestion near the lake, which would not be in conformance with the purpose and intent of the Ordinance. Therefore, the approval of special exceptions from the offset, shore setback, and floodplain setback requirements and the approval of a variance from the floor area ratio requirement to permit the residence to be remodeled and expanded, with the recommended conditions, would be in conformance with the purpose and intent of the Ordinance.

ADJOURNMENT:

Mr. Schultz

I move we adjourn this meeting at 9:41 p.m.

The motion was seconded by Mr. Tarmann and carried unanimously.

Respectfully submitted,

Mary E. Finet
Secretary, Board of Adjustment